

BellSouth Petition for Declaratory Ruling

BellSouth
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BellSouth's Petition

- On 12/09 BellSouth filed an Emergency Request for Declaratory Ruling To Preempt State Commission regulation of Broadband Internet Access Services.
- State commissions in Florida, Kentucky, Louisiana, and Georgia have ordered BellSouth to provide wholesale and/or retail broadband services to CLEC UNE voice customers and have dictated the rates, terms and conditions for those services.
- These state commissions have required BellSouth to provide either its wholesale broadband transmission or its retail broadband Internet access service over UNE loops leased by CLECs (either on a stand-alone basis **or** as part of the UNE platform (“UNE-P”)).
- These decisions violate the ***Triennial Review Order***, which expressly holds that ILECs need not provide data services on CLEC UNE voice lines, **see** 18 FCC Rcd at 17141, ¶ 270, and they are contrary to Congress’s policy of maintaining a “vibrant and competitive” market for Internet services “unfettered by . . . State regulation.”

Violation of Commission Rules

These state decisions violate this Commission's rules and orders for at least three independent reasons:

- First, the Commission held in the TRO that incumbents are not required to provide broadband services over the same UNE loops that CLECs use to provide voice services.
- Second, the Commission's *Computer Inquiry* decisions have established that interstate information services should remain free of public-utility regulation.
- Third, federal law is clear that state agencies generally lack authority to regulate interstate telecommunications services.

State Regulation Problems

- State-level regulation of broadband Internet access services creates a patchwork of regulatory burdens and will prevent the Commission's development of a national Broadband framework.
- The uncertainty and inconsistency that arise from state regulation of interstate information services will diminish facilities-based broadband competition.

Summary

BellSouth urgently requests that the Commission issue a declaratory ruling specifying that:

- (1) State commission decisions requiring ILECs to provide broadband Internet access to CLEC UNE voice customers are contrary to the Triennial Review Order and are thus preempted;
- (2) State commission decisions requiring the provision of broadband Internet access to CLEC UNE voice customers impose regulation on interstate information services that are in contravention of this Commission's orders; and
- (3) State commission decisions specifying the terms and conditions under which ILECs provide federally tariffed broadband transmission either on its own or as part of a broadband information service intrude on this Commission's exclusive authority over interstate telecommunications and are thus preempted.